COVID-19 Brings Temporary Changes to I-9 and E-Verify Procedures

Friday, May 8, 2020

Recognizing the profound impact COVID-19 is having on the way businesses operate, the Department of Homeland Security (DHS) has implemented temporary employment verification procedures to address some of these issues.

Form I-9 Inspection of Documents

Now and in the near future, employers taking physical proximity precautions due to COVID-19 will not be required to review an employee’s identity and employment authorization documents in person. Section 2, however, should still be completed within three business days of hire. Here’s how it will work:

- The employer may inspect the Section 2 documents remotely (i.e., via video link, fax, or email, etc.). As always, we recommend (and it may be required due to participation in E-Verify) retaining copies of the documents presented.
- Once physical inspection takes place, employers will enter “COVID-19” as the reason for the physical inspection delay in the field titled “Additional Information” in Section 2.
- Once normal operations resume, employees who were hired using remote verification must report to the employer within three business days for in-person verification of identity and employment eligibility documentation.
Once the original documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 Additional Information field or to Section 3 (if documents presented remotely have since expired).

These provisions may be implemented by employers through May 19 (which could be extended) or within three business days after the termination of the National Emergency, whichever comes first.

Employers who utilize these procedures must provide written documentation of their remote onboarding and telework policy for each employee.

**Form I-9 Expired List B Documents**

Because individuals may not be able to renew identity (List B) documents, effective May 1, 2020, employers may begin accepting expired documents from new hires to satisfy List B identity verification under the following conditions. There are different temporary procedures in place depending on the circumstances.

- Identity documents (List B) that expired on or after March 1, 2020, and were not automatically extended by the issuing authority may be treated the same as if the employee presented a valid receipt for an acceptable document for Form I-9 purposes.
  - Record the document information in Section 2 under List B.
  - Enter the word “COVID-19” in the Additional Information field.
  - Within 90 days after termination of this temporary policy, the employee will be required to present a valid unexpired document to replace the expired document presented at time of hire.
  - While the employee can later present an updated or replacement document, he or she has the option of presenting a different List A or List B document, and the new information should be recorded in the Additional Information field.
    - Initial and date the change.
    - Attach a copy of the document presented.

- Some issuing authorities, such as motor vehicle departments, are automatically extending document expiration dates due to COVID-19. In these cases, the documents are acceptable List B documents and are not considered a receipt, provided the document is presented during the extension time frame specified by the issuing authority.
  - Enter the document’s expiration date in Section 2.
  - Enter “COVID-19 EXT” in the Additional Information field.
  - Employers should attach a copy of a webpage or other notice indicating that the issuing authority has extended the documents. This will vary by state, so check the state’s Motor Vehicle Administration or Department of Motor Vehicles website.
  - The employee is not required to later present a valid unexpired List B document.
  - For E-Verify, employers should use the employee’s expired List B document number from Section 2 of the Form I-9 to create an E-Verify case as usual within three days of the date of hire.
E-Verify Extended Time for Responding to TNCs

Employers must use the hire date from the employee’s Form I-9 when creating the E-Verify case. If case creation is delayed due to COVID-19 precautions, select “Other” from the drop-down list and enter “COVID-19” as the specific reason.

Because many (if not all) Social Security Administration and DHS offices are currently closed to the public, E-Verify has extended the time frame for responding to Tentative Non-Confirmations (TNCs).

What Hasn’t Changed

Take note — while some things have changed, some things remain the same:

- Employers are still required to complete Form I-9 timely (Section 1 on or before first day of work and Section 2 within three business days from date of hire).
- Employers are still required to create cases in E-Verify for their new hires within three business days from the date of hire.
- Employers may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee’s case is in an extended interim case status (as noted above regarding attempting to resolve a TNC).

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